

2013 DRAFTING REQUEST

Assembly Amendment (AA-AB40)

Received: **6/5/2013** Received By: **tkuczens**
Wanted: **As time permits** Same as LRB:
For: **Legislative Fiscal Bureau** By/Representing: **Carmichael**
May Contact: Drafter: **tkuczens**
Subject: **Courts - evidence** Addl. Drafters:
Courts - limitations Extra Copies:

Submit via email: **YES**
Requester's email: **Legislative Fiscal Bureau**
Carbon copy (CC) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

LFB:.....Carmichael -

Topic:

Modifying statutory language relating to product liability law (Motion 999)

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens 6/5/2013			_____			
/P1		csicilia 6/5/2013	jmurphy 6/5/2013	_____	sbasford 6/5/2013		

FE Sent For:

<END>

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/? tkuczens

Handwritten notes:
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 JAMES 6/5

FE Sent For:

<END>

6. *Modifying Statutory Language Relating to Product Liability Law.* Modify current law relating to product liability provisions, as follows:

Motion 999

a. Create a "Legislative Findings and Intent" section which states: "The legislature finds that it is in the public interest to clarify product liability law, generally, and the application of the risk contribution theory of liability first announced by the Wisconsin Supreme Court in *Collins v. Eli Lilly Company*, 116 Wis. 2d 166 (1984), specifically, in order to return tort law to its historical, common law roots. This return both protects the rights of citizens to pursue legitimate and timely claims of injury resulting from defective products, and assures that businesses may conduct activities in this state without fear of being sued for indefinite claims of harm from products which businesses may never have manufactured, distributed, sold, or promoted, or which were made and sold decades ago. The legislature finds that the application of risk contribution to former white lead carbonate manufactures in *Thomas v. Mallet*, 285 Wis. 2d 236 (2005), was an improperly expansive application of risk contribution theory of liability announced in *Collins*, and that application raised substantial questions of deprivation of due process, equal protection, and right to jury trial under the federal and Wisconsin constitutions. The legislature finds that this section protects the right to a remedy found in article I, section 9, of the Wisconsin Constitution, by preserving the narrow and limited application of the risk contribution theory of liability announced in *Collins*."

b. Modify the "Applicability" section to specify that the provision applies to all actions "whenever filed or accrued."

c. Specify that the new sections first apply to actions or special proceedings pending on or commenced after the effective date of the section.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBb033917 P1

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LFB:.....Carmichael - Modifying statutory language relating to product liability law (Motion 999)

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 40

6/5/13

SAV

1

At the locations indicated, amend the bill as follows:

2

1. Page 996, line 13: after that line insert:

3

2. Page 1058, line 8: after that line insert:

4

(END)

Insert
1-3

Insert
1-4



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2300/P2

TKK:sac:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 **AN ACT** *to renumber* 895.046 (1); *to amend* 895.046 (2); and *to create* 895.046
2 (1g) of the statutes; **relating to:** remedies against manufacturers, distributors,
3 sellers, and promoters of a product.

Analysis by the Legislative Reference Bureau

2011 Wisconsin Act 2 (Act 2) made a number of changes to the law governing civil actions against manufacturers, distributors, sellers, and promoters of products.

Under Act 2, a manufacturer, distributor, seller, or promoter of a product who is a defendant in a civil action generally may be held liable for damages only if an injured party proves, in addition to causation, damages, and other elements of the claim, that the specific product that caused the injury was manufactured, distributed, sold, or promoted by the defendant. Also under Act 2, in cases in which an injured party cannot prove that the defendant manufactured, distributed, sold or promoted the specific product that caused the injury, the defendant may be held liable under risk contribution theory if: 1) the injured party names as defendants in the action those manufacturers who, collectively, during the relevant production period, manufactured at least 80 percent of all products sold in this state that are chemically identical to the specific product that allegedly caused the claimant's injury and 2) the injured party proves certain other elements related to the cause of the injury and the right of the injured party to a recovery. These provisions of Act 2 were made applicable to actions or special proceedings commenced on or after the effective date of the Act.

This bill provides that the provisions of Act 2 governing remedies against manufacturers, distributors, sellers, and promoters of a product apply to all actions

in law or equity, whenever filed or accrued. The bill includes a statement of legislative findings and intent which states, in part, that the portions of Act 2 governing remedies against manufacturers, distributors, sellers, and promoters of a product under risk contribution theory were enacted in response to the Wisconsin Supreme Court's decision in *Thomas v. Mallett*, 2005 WI 129.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Begin Insert 1-3

2318e

1

SECTION 1. 895.046 (1) of the statutes is renumbered 895.046 (1r).

2

SECTION 2. 895.046 (1g) of the statutes is created to read:

3

895.046 (1g) LEGISLATIVE FINDINGS AND INTENT. The legislature finds that it is

4

in the public interest to clarify product liability law, generally, and the application

5

of the risk contribution theory of liability first announced by the Wisconsin Supreme

6

Court in *Collins v. Eli Lilly Company*, 116 Wis. 2d 166 (1984), specifically, in order

7

to return tort law to its historical, common law roots. This return both protects the

8

rights of citizens to pursue legitimate and timely claims of injury resulting from

9

defective products, and assures that businesses may conduct activities in this state

10

without fear of being sued for indefinite claims of harm from products which

11

businesses may never have manufactured, distributed, sold, or promoted, or which

12

were made and sold decades ago. The legislature finds that the application of risk

13

contribution to former white lead carbonate manufacturers in *Thomas v. Mallet*, 285

14

Wis. 2d 236 (2005), was an improperly expansive application of the risk contribution

15

theory of liability announced in *Collins*, and that application raised substantial

16

questions of deprivation of due process, equal protection, and right to jury trial under

17

the federal and Wisconsin constitutions. The legislature finds that this section

18

protects the right to a remedy found in article I, section 9, of the Wisconsin

This is the letter "g"

1 Constitution, by preserving the narrow and limited application of the risk
2 contribution theory of liability announced in *Collins*.

3 SECTION 3. 895.046 (2) of the statutes is amended to read:

4 895.046 (2) APPLICABILITY. This section applies to all actions in law or equity,
5 whenever filed or accrued, in which a claimant alleges that the manufacturer,
6 distributor, seller, or promoter of a product is liable for an injury or harm to a person
7 or property, including actions based on allegations that the design, manufacture,
8 distribution, sale, or promotion of, or instructions or warnings about, a product
9 caused or contributed to a personal injury or harm to a person or property, a private
10 nuisance, or a public nuisance, and to all related or independent claims, including
11 unjust enrichment, restitution, or indemnification. V O

12 SECTION 4. Initial applicability.

13 (1) The treatment of section 895.046 (1), (1g), and (2) of the statutes first applies
14 to actions or special proceedings pending or commenced on the effective date of this
15 subsection. V O

(END)



State of Wisconsin
2013 – 2014 LEGISLATURE



LRBb0339/P1
TKK:cjs:jm

LFB:.....Carmichael – Modifying statutory language relating to product liability law (Motion 999)

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 40

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 996, line 13: after that line insert:

3 “**SECTION 2318e.** 895.046 (1) of the statutes is renumbered 895.046 (1r).

4 **SECTION 2318f.** 895.046 (1g) of the statutes is created to read:

5 895.046 (1g) LEGISLATIVE FINDINGS AND INTENT. The legislature finds that it is
6 in the public interest to clarify product liability law, generally, and the application
7 of the risk contribution theory of liability first announced by the Wisconsin Supreme
8 Court in *Collins v. Eli Lilly Company*, 116 Wis. 2d 166 (1984), specifically, in order
9 to return tort law to its historical, common law roots. This return both protects the
10 rights of citizens to pursue legitimate and timely claims of injury resulting from
11 defective products, and assures that businesses may conduct activities in this state

1 without fear of being sued for indefinite claims of harm from products which
2 businesses may never have manufactured, distributed, sold, or promoted, or which
3 were made and sold decades ago. The legislature finds that the application of risk
4 contribution to former white lead carbonate manufacturers in *Thomas v. Mallet*, 285
5 Wis. 2d 236 (2005), was an improperly expansive application of the risk contribution
6 theory of liability announced in *Collins*, and that application raised substantial
7 questions of deprivation of due process, equal protection, and right to jury trial under
8 the federal and Wisconsin constitutions. The legislature finds that this section
9 protects the right to a remedy found in article I, section 9, of the Wisconsin
10 Constitution, by preserving the narrow and limited application of the risk
11 contribution theory of liability announced in *Collins*.

12 **SECTION 2318g.** 895.046 (2) of the statutes is amended to read:

13 895.046 (2) APPLICABILITY. This section applies to all actions in law or equity,
14 whenever filed or accrued, in which a claimant alleges that the manufacturer,
15 distributor, seller, or promoter of a product is liable for an injury or harm to a person
16 or property, including actions based on allegations that the design, manufacture,
17 distribution, sale, or promotion of, or instructions or warnings about, a product
18 caused or contributed to a personal injury or harm to a person or property, a private
19 nuisance, or a public nuisance, and to all related or independent claims, including
20 unjust enrichment, restitution, or indemnification.”.

21 **2.** Page 1058, line 8: after that line insert:

1 “(4q) The treatment of section 895.046 (1), (1g), and (2) of the statutes first
2 applies to actions or special proceedings pending or commenced on the effective date
3 of this subsection.”.

4 (END)